

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TIMOTHY SIMS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

§
§
§
§
§
§
§
§
§

Civil Action No. 3:05-CV-1113-P (BH)

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of Title 28, United States Code, § 636(b), and the District Court's *Order of Reference*, filed June 14, 2005, this matter has been referred to the undersigned United States Magistrate Judge for proposed findings of fact and recommendation for disposition.

Plaintiff filed this action for review of the denial of his claim for benefits under the Social Security Act on May 24, 2005. On June 7, 2005, this Court granted Plaintiff leave to proceed *in forma pauperis* but denied his motion to appoint counsel. On August 16, 2005, this Court issued a scheduling order requiring Plaintiff to submit his motion for summary judgment setting forth all errors which he contends entitle him to relief no later than October 11, 2005.¹ Plaintiff failed to file a motion for summary judgment as ordered. To date, he has filed nothing further in this case.

I. INVOLUNTARY DISMISSAL

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss *sua sponte* an action for failure to prosecute or follow orders of the court. *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). This authority flows from a court's inherent power to control its docket, prevent

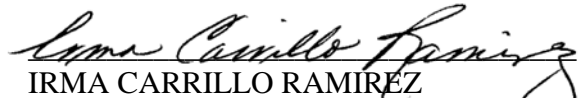
¹Local Rule 9.1(b) of the Local Civil Rules for the Northern District of Texas provides for review of complaints for benefits under the Social Security Act by cross-motions for summary judgment.

undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962). Plaintiff has failed to comply with the August 16, 2005 Order of the Court that he file a motion for summary judgment setting forth all errors which he contends entitle him to relief no later than October 11, 2005. Accordingly, the Court should dismiss this action without prejudice for failure to prosecute or follow an order of the Court.

II. RECOMMENDATION

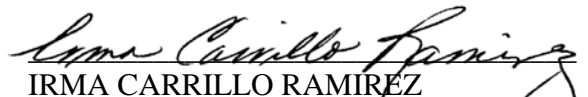
For the foregoing reasons, it is recommended that the Court dismiss the instant action without prejudice pursuant to Fed. R. Civ. P. 41(b) based on Plaintiff's failure to prosecute or comply with an order of the Court.

SIGNED this 15th day of May, 2007.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE